

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 400

INTRODUCER: Criminal Justice Committee and Senators Fasano and Gaetz

SUBJECT: Rape Crisis Programs

DATE: March 10, 2010

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------------|
| 1. | Munroe | Wilson | HR | Fav/1 amendment |
| 2. | Dugger | Cannon | CJ | Fav/CS |
| 3. | | | HA | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

| | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

An additional court cost or surcharge of \$151 will be assessed against a defendant who pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, any of the newly enumerated criminal offenses under the bill. (Currently, this surcharge is assessed against a smaller pool of criminal offenders under s. 938.085, F.S.) The additional surcharges must be deposited into the Rape Crisis Program Trust Fund. They will be used to fund rape crisis centers statewide.

The bill also adds offenses relating to human trafficking, human smuggling, lewd and lascivious acts committed upon or in the presence of an elderly person or disabled person, and written threats to kill or do bodily injury to the list of offenses for which the court must impose a surcharge to fund domestic violence programs under s. 938.08, F.S. Furthermore, the bill increases the amount of the surcharge from \$201 to \$301, with the increase of \$100 going to the Domestic Violence Trust Fund under s. 741.01, F.S. (Currently, \$85 of the surcharge goes into this trust fund.)

This bill amends sections 794.056, 938.08, and 938.085, F.S.

This bill reenacts sections 20.435 and 794.055, F.S., for purposes of incorporating the amendments made by the bill to ss. 794.056 and 938.085, F.S.

II. Present Situation:

In 2003, the Florida Legislature enacted the “Sexual Battery Victims’ Access to Services Act”¹ and created the Rape Crisis Program Trust Fund within the Department of Health (DOH).² The Act established a funding system that imposed a \$151 surcharge assessed on offenders convicted of sexual battery and other offenses, including many of the aggravated battery and other battery offenses. The clerk of the court retains \$1 of the surcharge as a service fee,³ \$150 goes into the Rape Crisis Program Trust Fund.

Under s. 794.055, F.S., the DOH must contract with a statewide nonprofit association to distribute these funds for the provision of sexual battery recovery services. The DOH contracts with the Florida Council Against Sexual Violence, Inc. (FCASV), a statewide nonprofit organization committed to victims and survivors of sexual violence and the rape crisis centers that serve them. The FCASV subcontracts with rape crisis centers throughout Florida to serve victims and to enhance services.

According to the DOH, from September 2003 to June 2009 county clerks deposited \$7,528,899 into the trust fund. In 2008-2009, the FCASV received \$396,585 to provide statewide initiatives in support of victims, while 31 certified rape crisis centers received \$1,586,339 to serve 8,932 new primary and secondary victims and 26,575 victims who were first seen prior to July 2008, but continued to receive services. These victims received 130,391 sexual battery recovery services.

In 2008, the Florida Department of Law Enforcement reported 10,823 forcible sex offenses and 2,976 arrests.⁴ According to national researchers, approximately one out of every nine adult women in Florida has been the victim of forcible rape, which equates to over 700,000 women in Florida (Ruggiero and Kilpatrick, 2003). Many victims fear disgrace if they tell family and friends about the abuse, and suffer alone (Jewkes, Sen, and Garcia-Moreno, 2002).⁵

Section 938.08, F.S., assesses a surcharge of \$201 upon offenders convicted of sexual battery, numerous assault and battery offenses, as well as domestic violence offenses. Payment of the surcharge is a condition of probation, community control, or any other court-ordered supervision. The clerk of the court retains \$1 of the surcharge as a service fee, with \$85 of the surcharge being deposited into the Domestic Violence Trust Fund. The remainder of the surcharge goes to the governing board of the county and can only be used to defray incarceration costs of specified domestic violators and to provide additional training for law enforcement to combat domestic violence.

¹ See section 794.055, F.S.

² See section 794.056, F.S.

³ See section 938.085, F.S.

⁴ The Sexual Battery Victims’ Access to Services Act Rape Crisis Program Trust Fund - Rape Crisis Services in Florida issued by the Division of Family Health Services Sexual Violence Prevention Program, 2010, the Florida Department of Health.

⁵ Id.

III. Effect of Proposed Changes:

The bill requires an additional court cost or surcharge of \$151 to be assessed against a defendant who pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, any of the newly enumerated criminal offenses. (Currently, this surcharge is assessed against a smaller pool of criminal offenders under s. 938.085, F.S.) The additional surcharges must be deposited into the Rape Crisis Program Trust Fund. They will be used to fund rape crisis centers statewide.

The newly enumerated offenses subject to this surcharge will include the following: predicate offenses for sexual predators; luring and enticing a child; human trafficking; human smuggling; unlawful sexual activity with certain minors; female genital mutilation; procuring a minor for prostitution; selling or buying minors into sex trafficking or prostitution; sex trafficking; forcing or coercing another to become a prostitute; deriving support from prostitution proceeds; renting space to be used for prostitution; buying prostitution services; exposing sexual organs; voyeurism; home-invasion robbery; home or private business invasion by false personation; abuse, aggravated abuse, and neglect of an elderly person or disabled adult; lewd or lascivious offenses committed against an elderly person or disabled person; sending written threats to kill or do bodily injury; computer pornography; transmitting pornography electronically; selling or buying minors to visually depict sexually explicit conduct; and sexual offender predicate offenses.

The bill also adds offenses relating to human trafficking, human smuggling, lewd and lascivious acts committed upon or in the presence of an elderly person or disabled person, and written threats to kill or do bodily injury to the list of offenses for which the court must impose a surcharge to fund domestic violence programs under s. 938.08, F.S.

Furthermore, the bill increases the amount of the surcharge from \$201 to \$301, with the increase of \$100 going into the Domestic Violence Trust Fund under s. 741.01, F.S. (Currently, \$85 of the surcharge goes into this trust fund.) The remainder will be used by the governing board of the county to defray incarceration costs of certain domestic violators and to provide additional training for law enforcement to combat domestic violence.

The effective date of the bill is July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Defendants pleading guilty or nolo contendere to, or found guilty of, regardless of adjudication, the crimes enumerated in the bill under s. 938.085, F.S., will be assessed an additional surcharge of \$151 to fund rape crisis centers. A surcharge increase of \$100 will also be imposed upon certain specified offenders to fund domestic violence programs under s. 938.08, F.S. The surcharge collected will be \$301 rather than \$201.

B. Private Sector Impact:

The assessments collected under the bill will provide additional revenue to fund rape crisis centers and domestic violence services in Florida. According to the Florida State Court Systems, the additional assessments to be deposited into the Rape Crisis Program Trust Fund under the bill will generate an estimated \$283,500 (at a collection rate of 31 percent) in additional revenue.

The additional \$100 surcharge to be deposited into the Domestic Violence Trust Fund is estimated by the Florida State Court Systems to generate \$1,010,625 (at a collection rate of 32 percent) in increased revenue.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 9, 2010:

- Adds offenses relating to human trafficking, human smuggling, lewd and lascivious acts committed upon or in the presence of an elderly person or disabled person, and written threats to kill or do bodily injury to the list of offenses for which the court must impose a surcharge to fund domestic violence programs under s. 938.08, F.S.

- Increases the amount of the domestic violence surcharge from \$201 to \$301, with the increase of \$100 going into the Domestic Violence Trust Fund under s. 741.01, F.S. (The increased surcharge going into the Fund will be \$185, rather than \$85.)

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
